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9 **UNITED STATES DISTRICT COURT**

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11 **CENTRAL DISTRICT OF CALIFORNIA — WESTERN DIVISION**

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13 ACLU OF SOUTHERN CALIFORNIA,

14 Plaintiff,

15 v.

16 THE UNITED STATES DEPARTMENT OF  
17 HOMELAND SECURITY,

18 Defendant.

19 Civ. No. 19-8454

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21 **Complaint for Declaratory and  
22 Injunctive Relief**

23

24 1. This is an action under the Freedom of Information Act (FOIA), 5  
25 U.S.C. § 552, seeking the release of records related to U.S. Customs and Border  
26 Protection's (CBP) treatment of beneficiaries of the Deferred Action for Childhood  
27 Arrivals (DACA) program.

28 **Jurisdiction and Venue**

29 2. This Court has jurisdiction over the parties and subject matter pursuant  
30 to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

31 3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

## Parties

4. Plaintiff ACLU of Southern California is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and of Rights. The ACLU of Southern California's work focuses on immigrants' the First Amendment, equal protection, due process, privacy, and furthering rights for disadvantaged groups. As part of its immigrants' rights work, ACLU Southern California monitors CBP's practices.

5. Defendant Department of Homeland Security (DHS) is an agency of United States.

## 6. CPB is a component of DHS.

7. CPB (or another component of DHS) has possession, custody, and control of the records Plaintiff seeks.

## **Statement of Facts**

8. As a part of its immigrants' rights work, Plaintiff requests public records from local, state, and federal entities involved in law enforcement and immigration enforcement activities. Plaintiff uses the documents disclosed through public records requests to educate the public through reports, "know your rights" trainings, and the media, and to advocate for reforms to immigration enforcement policies and practices. This suit involves a FOIA request to DHS and CBP that remains unresolved many months past FOIA's statutory deadline.

9. On February 28, 2019, Plaintiff sent a FOIA request to DHS's Privacy  
and CPB by email and U.S. Mail seeking information related to CPB's  
ment of beneficiaries of the Deferred Action for Childhood Arrivals (DACA)  
am.

10. Plaintiff requested expedited processing and a waiver of fees associated  
processing its request.

11. Plaintiff's request is attached as Exhibit A and incorporated here by  
reference.

1       12. On February 28, 2019, Plaintiff received an automated response from  
2 CPB's FOIA Division stating it no longer accepted email correspondence and  
3 directing Plaintiff to submit its request via a website portal. Plaintiff did so.

4       13. On March 1, 2019, CBP emailed Plaintiff to acknowledge receipt of the  
5 request and assigned the request Tracking Number CBP-2019-032909.

6       14. On March 8, 2019, DHS headquarters emailed Plaintiff to acknowledge  
7 receipt of the request and assigned the request Tracking Number 2019-HQFO-  
8 00471.

9       15. On March 11, 2019, CBP emailed Plaintiff again (presumably as a  
10 result of Plaintiff having submitted the request both online and via U.S. Mail) to  
11 acknowledge receipt of the request and assigned the request Tracking Number CBP-  
12 2019-035015.

13       16. Also on March 11, 2019, CBP emailed Plaintiff three more times  
14 stating, in one email, that Plaintiff's request for expedited processing was granted,  
15 in second, that Plaintiff's request for fee waiver in connection with the request was  
16 granted, and in a third, that it had changed the Tracking Number from CBP-2019-  
17 032909 to CBP-OIT-2019-032909.

18       17. On May 30, 2019, CBP emailed Plaintiff stating that it changed the  
19 Tracking Number from CBP-OIT-2019-032909 back to CBP-2019-032909 again.

20       18. Later on May 30, 2019, CBP emailed Plaintiff stating that it changed  
21 the Tracking Number from CBP-2019-032909 to CBP-OFO-2019-032909.

22       19. As of the filing of this Complaint, and despite the agency granting  
23 Plaintiff's request for expedited processing, Plaintiff has not received a final  
24 determination and response from CBP, DHS, or any other component of DHS with  
25 regard to the request.

26       20. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff is deemed to have  
27 exhausted its administrative remedies with regard to the request because the agency  
28 has failed to comply with the statutory time limit.

## **Count I: Violation of FOIA**

21. Plaintiff realleges and incorporates by reference the allegations in each of the preceding paragraphs of this Complaint.

22. Defendant has violated FOIA by failing to produce the records responsive to Plaintiff's February 28, 2019 request.

23. Plaintiff and the public have been and will continue to be irreparably harmed until Defendant is ordered to comply with Plaintiff's FOIA request.

## **Request for Relief**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare Defendant's failure to comply with FOIA to be unlawful;
  2. Enjoin Defendant from continuing to withhold the public records responsive to Plaintiff's FOIA request and otherwise order Defendant to produce the requested public records without further delay;
  3. Grant Plaintiff an award of attorney fees and other litigation costs reasonably incurred in this action, to the extent permitted by law; and
  4. Grant Plaintiff such other and further relief which the Court deems proper.

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/s/ Matthew Strugar

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